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C O N F I D E N T I A L CARACAS 000908

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STATE PASS USAID FOR DCHA/OTI

E.O. 12958: DECL: 03/16/2014

TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [VE](#)

SUBJECT: CHESS GAME IN THE SUPREME COURT OF JUSTICE

REF: CARACAS 898

Classified By: Political Counselor Abelardo A. Arias for Reason 1.4(d)

SUMMARY:

[11.](#) (C) Venezuela Supreme Court's (TSJ) Constitutional Chamber declared March 11 that it alone is the appropriate forum to hear cases regarding the National Electoral Council (CNE) and the proposed presidential recall referendum. Constitutional Chamber president Ivan Rincon told the Ambassador March 12 that such cases had to be removed from the Electoral Chamber to save the country and to take the decision out of "the opposition's Chamber." News of the Constitutional Chamber's decision came shortly after the TSJ Electoral Chamber rejected pro-Chavez and opposition motions to recuse its justices from cases regarding the CNE. The Constitutional Chamber's action, questioned because a decision has yet to be published and taken without the required quorum, aims to kill a suit filed by opposition allies challenging the CNE's decision to refuse to certify more than one million signatures from the presidential referendum signature drive. End Summary.

Background on Court Moves

[12.](#) (U) This cable provides background on the legal moves in the Supreme Court (TSJ) prior to the Electoral Chamber's March 15 decision, in which the Chamber instructed the National Electoral Council (CNE) to include more than 800,000 signatures, previously relegated to "observation," in the appeals process (reftel).

Dueling Court Chambers Trade Rulings

[13.](#) (U) After a flurry of legal maneuvering March 11, the TSJ's Constitutional Chamber declared that it alone is the

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appropriate forum to hear cases regarding the CNE and the proposed presidential recall referendum. The Constitutional Chamber, acting on a request presented by pro-GoV legislator Ismael Garcia (PODEMOS), made its declaration hours after the TSJ Electoral Chamber seemed to hand the opposition a victory

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when it declared itself competent to decide cases regarding the CNE.

[14.](#) (U) The Electoral Chamber's ruling rejected motions seeking to recuse each of the Chamber's members. Garcia, who is also a member of Chavez's election movement (Comando Ayacucho), filed a motion seeking to remove Justices Alberto Martini and Rafael Hernandez, alleging they were both prejudiced against President Chavez. Garcia and other pro-GoV legislators publicly called Martini a traitor for allegedly seeking protection from the U.S. Ambassador and now taking orders from the USG.

[15.](#) (U) Under court procedures, such a motion brought against the Chamber president would normally be decided by the Chamber vice president. Opposition legislator Gerardo Blyde (Primero Justicia), however, filed a motion to recuse the Chamber VP. The additional motion threw the decision to the whole three-judge panel, which ruled that all recusal motions were untimely and without sufficient legal basis.

Chief Justice Feared Decision of Electoral Chamber

[16.](#) (C) In March 12 meeting, TSJ Chief Justice Ivan Rincon, who also serves as the president of court's Constitutional Chamber, told the Ambassador that he had to take the case away from the Electoral Chamber to keep the country from

"going up on flames." Rincon dismissed the Electoral Chamber as an instrument of the opposition, and alleged that that

Chamber was poised to declare a referendum without regard for the CNE-mandated appeals process. Letting the Electoral Chamber rule on the case, said Rincon, would be akin to permitting a "coup d'etat by magistrates." Rincon agreed that allegations that Electoral Chamber president Martini was taking orders from the USG were baseless. However, Rincon said opposition leaders such as Juan Fernandez and Henry Ramos were "close" to Martini. Rincon said he suspects there are as many as 300,000 false signatures filed by the opposition, and complained that the media had interposed itself in the process instead of acting as an observer.

17. (C) The Ambassador told Rincon several times that the international perception of the CNE's verification of the presidential referendum signatures is that it was arbitrary, and that by rejecting 50% of the signatures because the personal data were allegedly entered by the same hand the CNE altered the outcome of the petition drive. He urged the Venezuelan justice to do what he could to ensure that the appeals system being developed for the signatures was transparent and workable, and that the universe of signatures to be considered in the appeals process be as large as possible. Rincon agreed it should be transparent and workable.

Opposition Law Suit Could Force a Referendum

18. (U) The central case before the Supreme Court, filed by Blyde and opposition allies, challenges the CNE's rejection of some 1.3 million signatures from the recent Presidential referendum signature drive. The CNE threw out many of the rejected signatures because some corresponding data on the petition forms was written in the same hand. The opposition suit claims the CNE never published guidelines directing signers to fill in all information with separate handwriting, and therefore alleges that failure to certify the 1.3 million signatures is illegal.

19. (U) Noted constitutional expert Tulio Alvarez, speaking to reporters, questioned the validity of the Constitutional Chamber's decision -- no decision has been published and there was no quorum in the Constitutional Chamber. The Constitutional Chamber, he asserted, cannot make a decision infringing on the jurisdiction of the Court's other chambers. Alvarez also noted that accepting that one Chamber of the court can usurp the jurisdiction of another would signal the complete emasculation of the judiciary.

Comment:

10. (C) Court-watchers expect these rulings to be only the first round of decisions in several competing legal actions that could impact on a decision to schedule a presidential recall referendum. Under court rules, the TSJ's Constitutional and Electoral Chambers enjoy co-ordinate jurisdiction on some electoral matters. Recognizing this, opposition lawyers had hoped to push their case through the Electoral Chamber. Because the recall referendum is a matter stemming from a constitutional provision, however, Chavez supporters saw an opening to transfer the case to the Constitutional Chamber. For now, these moves in the referendum legal chess match appear to kill the opposition's central case. Rincon is convinced that allowing a referendum without first having a CNE-run appeals process first is unworkable. Nevertheless, he appears open to discuss options.
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